IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 672 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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STATE OF GUJARAT - Appellant(s)
Versus
THAKOR BACHUBHAI SOMABHAI - Opponent(s)

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Appearance :
MR KT DAVE, LD.APP for Appellant(s) : 1,
MR DR BHATT for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. Heard Mr.K.T. Dave, learned Additional Public Prosecutor, appearing on behalf of the

appellant-State and Mr.D.R. Bhatt, learned counsel appearing for the respondent-accused.

2. The present appeal is preferred under Section 378 of the Code of Criminal Procedure, 1973, assailing the judgment and order of acquittal dated 23rd September, 1985 passed by the learned Additional Sessions Judge, Narol, Ahmedabad (Rural) in Sessions Case No.64 of 1985. The appellant-State has assailed the legality and validity of the judgment and order of acquittal on certain grounds enumerated in paragraph no.4 of the memo but the main contention of the appellant-State is that the learned trial Judge ought not to have held the respondent-accused responsible for the offence punishable under Section 135 of the Bombay Police Act and the acquittal under Section 302 ought not have been recorded. It was necessary for the learned trial Judge to hold the accused responsible for the offence punishable under Section 304(I) of the Indian Penal Code. There was no need for the learned trial Judge to discard the evidence of two

witnesses i.e. PW-2 Shankar; and PW-Kalubhai in toto and the theory of self-defence was not required to be inferred from the evidence led by the prosecution.

3. To appreciate the grievance of the appellant-State, we would like to state the case of the prosecution in brief. According to the prosecution, on 17th February, 1985 at about 01-00 p.m. some scuffle had taken place between Suresh (deceased) and the respondent-accused just near the shop of PW-5 Manubhai, Tailor and also in the vicinity of one hawker PW-6 Babu Rana. That the said Suresh (deceased) and the respondent-accused had been to the shop of PW-5 Manubhai, Tailor for taking delivery of their stitched clothes and as they had entered the shop of PW-5 Manubhai, simultaneously both started claiming to Manubhai that he should be given priority for delivery of his clothes. At that time, there was hot exchange of words and a scuffle had taken place outside the shop of Manubhai. The accused was carrying knife with him. Suresh

(deceased) was in company of two other persons and in that scuffle the accused gave a knife blow to Suresh which ultimately proved to be a fatal. Rajesh I. Patel-nephew of Suresh (deceased) when came to know about the scuffle and blow of knife given to his uncle Suresh, he went to the spot of incident and he saw that there was profusely bleeding oozing out from the thigh of his uncle, who was near the shop of PW-Manubhai, Tailor. It is the say of the complainant-Rahesh I. Patel that Suresh (deceased) informed him about the scuffle that had taken place between Suresh and the accused. The injured Suresh thereafter was taken to Vadilal Sarabhai Hospital at Ahmedabad in a Metadoor bearing Registration No.GAK-9327 from Sanand, where the injured Suresh was declared dead. Thereafter, the complainant lodged a complaint/ FIR with Sanand Police Station. This FIR is at Ex.22. We have carefully gone through the FIR and the allegations made therein.

4. Mr.K.T. Dave, learned Additional Public

Prosecutor, has taken us through the evidence of complainant as well as two important witnesses Shankarbhai and Kalubhai. Undisputedly, the complainant is not an eye-witness even as per his version before the Court and his say in the FIR. The postmortem note proved and exhibited by the doctor is at Ex.14 and on perusal of the doctor's evidence as well as the postmortem note, it is clear that one abrasion was found on the chest of the deceased but only one injury which can be said to be a grave injury was found on the body of the deceased. This injury is described in column no.17 of the postmortem note and we would like to reproduce the same because no other injury found on the body of the person deceased is an important relevant aspect for appreciating evidence led by the prosecution as well as the contentions raised by the defence side. This injury is as under :

> “Incise wound 2 X 0.5 X 4 cm. deep in size on right thigh interior medical aspect 13 cm. below from interior superior illiacsymphysis wound was

pointed on medical side and had clear cut sharp margin upper margin overlapping to lower margin Lower margin was inverted as shown in figure Blood stained cut muscle tissue seen from wound gape on possection.

Haematoma found over muscle or thigh in the sub cataneous tissue under the wound.

Clots of effused blood found in wound and tissue under wound.

Femoral artery was found cut."

5. The learned trial Judge has appreciated the oral as well as documentary evidence and in response to the query raised by the Court, the learned Additional Public Prosecutor has fairly accepted that there is no as such perversity in the decision and the learned trial Judge has tried to appreciate the evidence on record but according to Mr.Dave, learned Additional Public Prosecutor, this is a clear case of exceeding a private defence. Even for the sake of argument, if it is accepted that the accused was cornered or must have been subjected to a grievous hurt by

three persons including the deceased, he ought not to have given such a heavy blow of knife to Suresh (deceased) and that too on the thigh from where important big artery of human body is passing through. According to us, the learned trial Judge has appreciated all relevant aspects. The learned trial Judge who records the evidence has an opportunity to appreciate the demeanour of each witness and the version placed by them before the Court during trial. It appears that the learned trial Judge has appreciated rightly that two important independent witnesses namely the tailor Manubhai-PW-5 Ex.29 and the hawker Shankar-PW-2 Ex.26, who puts his 'lari' (handcart) near the shop of tailor Manubhai, have not supported the case of the prosecution and they have been declared hostile and the accused was alone and Suresh was in company of two other persons, is a fact that has come on record in the evidence led by the prosecution. The question posed by the learned Additional Public Prosecutor is as to why the accused was

carrying knife with him when he was to visit the shop of a tailor and this is not the case wherein the accused under some excitement had given blow with the scissors of a tailor. It is possible to appreciate this question from more than one angle and one of such angle is placed before us by the learned counsel representing the respondent-accused. It is rightly argued that for the wrong of carrying knife, the accused has been held guilty by the learned trial Judge and he has been sentenced to undergo four months rigorous imprisonment and a fine of Rs.50/- and in default to pay the same, simple imprisonment for 15 days. According to Mr.D.R. Bhatt, the accused had remained in jail throughout the trial and therefore, there is no reference about confiscation of his bail bond by the accused. It is rightly argued by Mr.Bhatt that the accused had not selected any vital part of the body of the deceased, so it was not possible for the learned trial Judge to infer that the accused had intention to kill or give a

serious blow. The postmortem note contains approximate age of the deceased but does not speak about the structure of body and height of the deceased. So hypothetically if the Court visualises the entire situation, unless the difference of height is significant, a vital blow normally would fall on chest or abdomen. Unless the person assailant is short of height or unless he was sitting down, the blow would not fall on the lower part of the body of the deceased. Ultimately, this is a case of one blow. When the learned trial Judge has accepted that there is an element of self-defence in the reaction of the accused, the fact that only one blow was found on the body of the deceased, makes him entitled to the advantage of the theory of private defence. When it is accepted by the learned trial Judge that Suresh (deceased) was in company of two other persons, it is possible for the Court that all the three were youngsters and they could have overpowered the accused in couple of seconds. The age of the deceased is shown

as about 17 years in the postmortem note. For short, according to us, the learned trial Judge cannot be said to have committed any error in appreciating the evidence led by the prosecution. At least the accused could have got the benefit of doubt and therefore, he has been held not responsible for the offence punishable under Section 302 of the Indian Penal Code. Unless the conduct of the accused is found criminal, the learned trial Judge is not supposed to appreciate whether the accused can be held responsible for any lesser offence than charged. In the present case, when a theory of private defence is found acceptable and it was clear from the evidence that the accused had not exceeded to the right of private defence, then according to us, the finding of acquittal recorded by the learned trial Judge cannot be said to be bad or erroneous.

6. The reasons recorded by the learned Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a

decision in the case of ***Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204***, has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of ***Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,*** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above cited decision, there is no merit in the present appeal and the same is required to be dismissed.

7. In view of above observations, the present leave to appeal is hereby refused and hence, the appeal stands dismissed.

(C.K. Buch, J)

(K.A. Puj, J)

Aakar